

(30,281)

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IN THE
**SUPREME COURT OF THE
UNITED STATES OF AMERICA**

OCTOBER TERM, 1924
No. 363

EDWARD HINES YELLOW PINE TRUSTEES,
PETITIONERS,

VS

ANNA F. C. MARTIN, F. C. MARTIN, H. P. LEWIS
AND GEORGE LAWRENCE
RESPONDENTS

ON A WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT

EXHIBIT TO BRIEF FOR RESPONDENTS

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Attorneys for Respondents.



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STATEMENT IN EXPLANATION OF EXHIBIT

This exhibit is divided into three sections or headings:

- (a) Authenticated copy of record of Mississippi Supreme Court showing suggestion of error filed by appellant, request by the Court for reply thereto by counsel

for apellee, and order of the Court overruling said suggestion of error in case No. 23,035, docket of said Court, styled Edward Hines Yellow Pine Trustees v. F. C. Martin, and reported in 99 Sou. Rep. 825, and referred to in the brief to which this is an exhibit.

(b) Authenticated copy of record of Mississippi Supreme Court showing answer of defendant with copy of deed from Pearl River Improvement & Navigation Company to M. S. Baldwin dated November 20, 1872, introduced therein in case No. 17,851, docket of said Court, styled Becker v. Columbia Bank, and reported in 112 Miss. 819, and referred to in the brief to which this is an exhibit.

(c) Certificate of Clerk of Chancery Court of Lawrence County, Mississippi, under seal, showing description of land involved in the said case of Becker v. Columbia Bank, supra, and also showing that said lands were embraced in patent from State of Mississippi to Pearl River Improvement & Navigation Company dated June 27, 1871, and that said land was embraced in deed from said Company to M. S. Baldwin dated November 20, 1872.

The purpose of the exhibit is to show those things referred to in our brief to which the same is an exhibit, at page 46 thereof, by way of answer to the statement made by counsel, not supported by the record in the case at bar but insisted upon by counsel, that the lands dealt with by the Act of 1873, set out as Exhibit "C" to the petition for certiorari herein, were divided into two classes; (a) those lands which at that time still owned by the Pearl River Improvement & Navigation Company, and (b) those lands which at that time had been deeded away by the company; and by way of answer to the further statement by counsel that the cases of Hardy v. Hartman, 65 Miss. 504, and Becker v. Columbia Bank, 112 Miss. 819 dealt with lands designated by counsel as class (a); and by way of answer to the further statement by counsel that

the Supreme Court of Mississippi has never had before it or passed upon the question of the validity of the title to lands conveyed by the Pearl River Improvement & Navigation Company prior to said Act of 1873 and falling within what counsel designated as class (b) of the lands; and in order to show the lands dealt with by the Circuit Court of Appeals in the case of Southern Pine Company v. Hall, 105 Fed. 84, and in the case at bar are exactly the same kind of lands dealt with by the Supreme Court of Mississippi in Becker v. Columbia Bank, *supra*, and in Edward Hines Yellow Pine Trustees v. F. C. Martin, *supra*; and in order to show that in both those cases the claimant under Pearl River Improvement & Navigation Company title relied on the Act of 1873 as a ratification of his title.

(a) AUTHENTICATED COPY OF MISSISSIPPI SUPREME COURT RECORDS IN CASE NO. 23,035, EDWARD HINES YELLOW PINE TRUSTEES v. F. C. MARTIN, REPORTED 99 SOUTHERN REPORTER 825.

**IN THE SUPREME COURT OF THE
STATE OF MISSISSIPPI.**

NO. 23, 035.

**EDWARD HINES YELLOW PINE TRUSTEES ET AL,
Appellants,**

V.

F. C. MARTIN,

Appellee.

SUGGESTION OF ERROR

MAY IT PLEASE THE COURT:

This case was affirmed without an opinion, and for that reason it is not apparent just what points were con-

sidered and passed upon by the court in reaching its decision.

One point presented and urged on appeal was the pleadings and the result reached on the trial under the pleadings contrary to the remedial laws of the State. This point was briefed at length, and we think sufficiently presented to the court to render the court's decision thereon final as to that point. No further reference, therefore, will be made to it in this assignment of error.

Another point presented was the question of adverse possession. The case was remanded to the court in banc for reargument. On the reargument the question of adverse possession was stressed. We are satisfied with the presentation of the case as to that feature, and will not discuss that point in this assignment of error.

The point that we desire to press is: The title of appellants held under the Pearl River Improvement and Navigation Comany's patent is a good and valid title. This point was not urged theretofore for the reason that Chapter 114, of the Laws of 1873, was overlooked and was not presented to this court in the consideration of the case. In fact, the aforementioned Act of the Legislature had escaped our attention, and it was assumed that Hardy v. Hartman, and Becker v. Columbia Bank were controlling in this case as to the validity of the title held under the Pearl River Improvement and Navigation Company's patent. Before we enter upon a discussion of the Acts of the Legislature and the Hartman and Becker cases, we deem it advisable to restate the facts as they appear in the record.

On page 61 of the record, Land Record Book 4 of Pearl River County, at page 191, is introduced, being the patent from the State of Mississippi to the Pearl River Improvement and Navigation Company, dated June 11,

1871. On page 65, the same record book, (page 215) was introduced, which is a deed from the Pearl River Improvement and Navigation Company to M. S. Baldwin, executed on the 20th day of November, 1872. On page 66 the same record book, (page 239) is introduced, showing the sale and conveyance of the said land from M. S. Baldwin to Israel Hall on the 17th day of April, 1873. The record then discloses a perfect chain of title from Israel Hall to the appellants in this case.

Hardy v. Hartman, 65 Miss. 305, and Becker v. Columbia Bank, 73 Southern, 798, are not authorities in this case and have no probative weight in its consideration.

The patent to the Pearl River Improvement & Navigation Company was issued June 11, 1871, under the authority of the Act of April 8, 1871. The Pearl River Improvement and Navigation Company was created as a corporate agency of the State for the purpose of receiving lands donated to be sold and the proceeds used in the development and drainage of Pearl River. The Legislature in 1873 recognized the fact that it was impractical to improve Pearl River, and by Chapter 114, of the laws of that session, dealt with the subject in accordance with the conditions confronting it at that time.

It will be noted that the Pearl River Improvement and Navigation Company had, previous to the consideration of the subject by the Legislature, sold and conveyed the lands in question, as is shown by the deeds introduced on the trial of this case. It is true that not all of the lands embraced in the grant to the Pearl River Improvement and Navigation Company had been sold and conveyed by that Company. The legislature dealt with the lands donated to the Pearl River Improvement and Navigation Company and still owned by said company in one way, and also with the lands that had been donated to the said company and by it sold and conveyed in quite another way.

Chapter 114 of the Acts of 1873 relieved the Pearl River Improvement and Navigation Company of the burden of the improvement of Pearl River. The Act provided that the patents which had been issued to the company should be deposited with the Secretary of State, and that upon the payment of twenty-five cents per acre they should be redelivered to the company. The Act further provided that upon the payment of twenty-five cents per acre for all lands within the grant for which patents had not been issued, a patent therefor should issue to said company. By Section 4 of the Act, it was provided that the payment of twenty-five cents per acre referred to in the first section of the Act should be made on or before the 1st day of October, 1873; otherwise all rights, title, interest and claim of said company should revert to the State and rest absolute in the State.

The Legislature in the same act dealt with these lands which had been sold and conveyed by the Pearl River Improvement and Navigation Company. The said act in Section 6 specifically dealt with this character of lands as being separate and distinct from the other lands, for which patents had issued or were included in the grant of April 8, 1871. Section 6 of the act provides:

“BE IT FURTHER ENACTED, That all Acts and parts of acts and all acts, DEEDS, and proceedings whatever of the Pearl River Improvement and Navigation Company, be, and the same are, hereby legalized, ratified, and confirmed.”

This Act was approved April 19, 1873, and became a law.

It is certainly clear that the Legislature, by the Act of 1873, dealt with the lands donated by the Acts of 1871 to the Pearl River Improvement and Navigation Company,

in two separate and distinct characters dependent upon the status of the lands at that time. The Pearl River Improvement and Navigation Company evidently never complied with the provisions of the Act by paying the twenty-five cents per acre for the lands still owned by it for which patents had issued, or for the lands embraced in the act, and for which no patent had issued. A failure to comply with this provision of the law rendered the patents to the lands, the title of which was vested at that time in the Pearl River Improvement and Navigation Company, void. The act provided for the cancellation of the bond, showing that a bond had been issued. That fact, however, does not enter into a consideration of this case, and we refrain from a discussion of that feature of it.

Now let us examine the case of *Hardy v. Hartman*. In this case no patent for the land had ever issued to the Pearl River Improvement and Navigation Company. The lands had been sold for taxes on the assumption that title had passed by the act itself to said company. The court held that the instrument was not a sufficient compliance with the law to pass the title without a patent. It further held that if a patent had issued, under the provisions of the bond before the court that it would have been void. Let it be observed, that these lands had not been sold by the Pearl River Improvement and Navigation Company prior to April 19, 1873.

Becker v. Columbia Bank, *supra*, is identically the same state of facts as *Hardy v. Hartman*, except a patent is shown to have issued. The pearl River Improvement and Navigation Company has never sold the lands involved in the Becker case, and therefore they came within the purview of the act of 1873, in which the lands were still owned by the Pearl River Improvement and Navigation Company. Under the provisions of the Act of 1873, no patent could issue to the Pearl River Improvement and Navigation Company for the lands involved in the Hart-

man case until after the price of twenty-five cents per acre had been paid. No patent was ever issued. The presumption was that the price had not been paid, and of course no title passed.

In the case of Becker v. Columbia Bank, a patent had issued in 1871 to the Pearl River Improvement and Navigation Company. The said Company, however, had never parted with the title, and the lands came within the provisions of the Act of 1873, requiring the payment of twenty-five cents per acre or the cancellation of the said patent and the revesting of the title absolute in the State. It was not shown that the Act of 1873 was compiled with by the company, and therefore the patent was void.

Now Hardy v. Hartman and Becker v. Columbia Bank are rules of property as to the validity of the title to all the lands granted to the Pearl River Improvement and Navigation Company that come within the first class of lands above dealt with. But these cases have no bearing whatever; have never attempted to pass on and do not control, as rules of property, or otherwise, that class of lands dealt with by Section 6 of Chapter 114 of the Laws of 1873.

The land, the title to which is in question here, are shown by the record in this case to be lands coming within that class of lands dealt with in Section 6 of Chapter 114 of the Laws of 1873.

The Pearl River Improvement and Navigation Company had sold the lands involved in this suit in 1872 to M. S. Baldwin. On April 17, 1873, M. S. Baldwin sold them to Israel Hall. This second sale was made just two days before Chapter 114 of the Laws of 1873 became operative. It is clear that it was the title to the lands thus situated and these lands that the Legislature had in mind in enacting Section 6 of the said Act. This act provides

that all the * * deeds, * * * whatever of the Pearl River Improvement and Navigation Company be and the same are hereby legalized, ratified and confirmed. If the Legislature ratified and confirmed the deed of the Pearl River Improvement and Navigation Company, then the title became absolute in the vendees of that company.

Cutler v. Madison County, 56 Miss. 115.
Bridgeport v. Railroad, 15 Conn. 475.
Fredrick v. Augusta, 5 Ga. 561.
Mattingly v. District of Columbia, 97 U. S. 687.
State v. Newark, 27 N. J. L. 187.
New Orleans v. Clark, 96 U. S. 644

There are many other authorities on this point but we deem it unnecessary to cite more.

We submit to the court that the Suggestion of Error should be sustained, and the cause should be reversed and dismissed.

Respectfully submitted,

(Signed)

DAVIS & WALLACE,
T. J. WILLS,
Attorneys for Appellants

Endorsed:

Filed March 6, 1924.
W. J. Buck, Clerk.

IN THE SUPREME COURT OF MISSISSIPPI

No. 23035

**EDWARD HINES YELLOW PINE TRUSTEES, ET AL,
IN BANC:**

VS.

PER CURIAM.

F. C. MARTIN

Before proceeding further with the consideration of the Suggestion of Error filed herein, the Court desires a reply thereto from counsel for the appellee, to be filed on or before Thursday, April 10th, 1924; to which counsel for the appellant may reply within one week after the filing thereof. Copies to be served in accordance with the rules of this Court.

March 26th, 1924.

Sent to Messrs.

T. J. Wills, Hattiesburg, Miss.

Hathorn & Williams, Poplarville, Miss.

Davis & Wallace Purvis, Miss.

Minutes of Supreme Court of Mississippi.—May 12, 1924

Edward Hines Yellow Pine Trustees, et al

No. 23 035—Vs.

F. C. Martin

This cause coming on to be heard on the suggestion of error filed herein and this court having sufficiently considered the same doth order and adjudge that said suggestion of error be and the same is hereby overruled.

State of Mississippi
Hinds County

I, W. J. Buck, clerk of the Supreme Court of Mississippi do hereby certify that the attached pages contain a true and correct copy of the suggestion of error, order overruling suggestion of error, and notice sent out by the court as to filing of briefs on suggestion of error in Cause No. 23 035 Edw. Hines Yellow Pine Trustees, et al vs. F. C. Martin.

Witness my hand and the Seal of said Supreme Court hereunto affixed at offices in the Capitol in the City of Jackson, Mississippi, this the 17th day of April, 1925.

(Seal)

W. J. BUCK,
Clerk of the Supreme Court of Mississippi.

(b) AUTHENTICATED COPY OF MISSISSIPPI SUPREME COURT RECORDS IN CASE NO. 17,851, BECKER v. COLUMBIA BANK, REPORTED 65 MISSISSIPPI REPORTS 504.

STATE OF MISSISSIPPI,
Lawrence County.

IN THE CHANCERY COURT OF SAID COUNTY

Columbia Bank

vs.

Mrs. Ella May, et al.

ANSWER OF THE DEFENDANTS TO THE BILL OF COMPLAINT

Now come the defendants and saving and reserving to themselves all benefit of exceptions which they have, or might take, to the bill of complaint, because of its many imperfections, and answering thereto, they say;

That the deny and say that it is untrue that the complainant is the legal and equitable owner of the lands in Lawrence County, Mississippi, described as the SW $\frac{1}{4}$ of Section 17, Township 5, Range 12 East.

The defendants admit that said lands were granted to the state of Mississippi by act of Congress of date of September, 28th, 1850, and that they are of the class known as swamp and overflow lands and that they were donated to the state of Mississippi as belonging to this class of lands. Said lands lying and being situated on Pearl River in Lawrence County and being within the exception contained in Sec. 6, Art. 8 Constitution of 1869, and being of the class which the Legislature had the right and authority to issue patents to the P. R. N. & Imp. Co.

The defendants say that they deny and that it is untrue that the title to this land remained in the state of Mississippi until the 12th day of August, 1902, but they admit that on this date the state, by its patent, undertook and pretended to convey the said lands to one W. W. Bradshaw. The defendants aver and charge on information and belief, that long prior to August 12th, 1902, the state of Mississippi parted with its title to said land.

The defendants say that they are without knowledge of the facts alleged in the bill in regard to the conveyances running from W. W. Bradshaw, through various and sundry parties, on down to the complainant, and being without such knowledge the said allegations of the bill are hereby denied.

The defendants deny and say that it is untrue that the complainant is in possession of the land and that the defendants are in nowise in possession thereof, and have never at any time been in possession of said land. They admit that they have a deed to the land and that they claim the title thereto, but they deny that their right, title or interest in said land is a mere pretended right, title or interest.

They are advised, aver and charge, on information and belief, that W. W. Bradshaw on the 12th day of August, 1902, did not acquire any title by his alleged and pretended patent issued to him by the state of Mississippi from E. H. Nall, Land Commissioner, countersigned by A. H. Longino, Governor, and J. W. Power, Secretary of State, for the reason that long prior thereto, to-wit:

On March 12th, 1852, by an act of the Legislature of the State of Mississippi, approved on that date, the said land was granted to a Board of Commissioners to be appointed as provided for in said act. The title of said act being:

"AN ACT TO PROVIDE FOR THE APPROPRIATION OF THE SWAMP AND OVERFLOW LANDS ON PEARL RIVER TO THE COMMISSIONERS OF SAID RIVER HEREINAFTER TO BE APPOINTED FOR THE DRAINING OF SAID SWAMP LANDS AND FOR OTHER PURPOSES."

By Section 2 of this act, it was provided that the swamp and overflow lands lying and situated on Pearl River in the County of Lawrence and included in the grant of said lands made by act of congress under date of September 28th, 1850, to the State of Mississippi be, and the same were thereby presented and granted to the Commissioners of the Southern District of Pearl River and their successors in office for the purpose of reclaiming and draining said swamp and overflowed lands by ditching, leveeing or removing obstructions from said river.

In 1871 the Legislature passed "An Act to Incorporate the Pearl River Improvement and Navigation Company and for other Purposes." By Section 4 of this Act the Pearl River Improvement and Navigation Company were declared to be the legal and lawful successors to the Board of Commissioners appointed in pursuance of the Act of March 12th, 1852, and as such successors, vested with all the rights, properties, claims and demands, whether real, personal or fixed, belonging to said Board or under their control.

By Section 5 of the Act of 1871 it was provided "That said Company shall within sixty days after passage of this Act, file with the Secretary of State, a bond in the sum of \$50,000.00, with two or more good sureties, who shall make oath that they are worth the penalty of the bond over and above all liabilities and exemptions which sureties shall be residents of this state and be approved by the Governor, and after the filing and approval

of said bond, said Secretary of State shall, from time to time, when demanded by said Company, make out a patent, or patents, for said land to said company, which patent, or patents, shall be signed by the Governor and countersigned by the Secretary of State and vest the fee simple of said lands in this Company; provided nothing in this Section shall be construed to require patents to issue for any lands theretofore sold to legal purchasers.

That acting under the provisions of the Act of the Legislature, the Pearl River Improvement and Navigation Company tendered to the state its bond, conditioned as required by law with two or more good and sufficient sureties in the penal sum of \$50,000.00, and the said bond was approved on May 12th, 1871, by J. A. Alcorn, Governor of the State of Mississippi which said bond is in the words and figures following, and was a substantial compliance with the requirements of said act:

" BOND"

"Pearl River Improvement and Navigation Company.

Know all men by these presents, that we, Walter P. Billings, Samuel A. Vose, A. Warner, O. C. French, are held and firmly bound unto the State of Mississippi in the sum of fifty thousand dollars, the payment of which well and truly to be made, we bind ourselves, our heirs and executors, jointly and severally, by these presents The conditions of the above bond is such, that whereas by an Act of the Legislature of the State of Mississippi, entitled "An Act to Incorporate the Pearl River Improvement and Navigation Company, and for other Purposes," a company was incorporated called the Pearl River Improvement and Navigation Company, which Company is charged with certain duties and bound by certain conditions in said act specified. Now, if said company will well and truly perform or cause to be performed, all the acts and things mentioned in said act of incorporation,

and comply with all the terms and conditions in accordance with the tenor and meaning of said act, then this bond to be void, otherwise to remain in full force and effect.

In witness whereof said persons have hereunto set their hands and seals this the 7th day of April, 1871.

W. P. BILLINGS (Seal)
By S. A. VOSE, his attorney
A. WARNER (Seal)
O. C. FRENCH (Seal)

Approved May 12th, 1871

A. L. ALCORN, Governor."

That after the filing and approval of the said bond, the Pearl River Improvement and Navigation Company applied to the Secretary of the State and to the Governor thereof for a patent to certain lands including the SW $\frac{1}{4}$, Section Seventeen, Township Five, Range Twelve East, and on the 27th day of June, 1871 a patent was duly issued by the Secretary of State, which said patent was filed for record and is duly recorded in Book M, pages 118 to 121 of the Deed Records of Lawrence County, Miss., to which reference is here made as a part of this answer and a copy of the said patent will be filed with said answer and made a part of the same as Ex-A.

That during the year 1873 the Legislature of the State of Mississippi passed another act validating and curing any defects that may have existed with reference to and of the matters and things pertaining to these lands in the title of the Pearl River Improvement and Navigation Company, and validating the patents issued by the state to this Company, and it has been held and decided by the Circuit Court of Appeals of the United States, that these acts of the Legislature and the patents issued by the Governor are legal and valid and that the Pearl River

Improvement and Navigation Company acquired a legal and valid title to the lands herein described, and that the persons holding and claiming the title under the Pearl River Improvement and Navigation Company are entitled to protection. The decision by the said Circuit Court of Appeals referred to, and the opinion of the court will be found reported in the case of—

Hall vs. Southern Pine Co., 105 Fed. Rep. page 84. The defendants deny therefore, and say that it is untrue as alleged in the complainant's bill that the patent issued by the State of Mississippi on the 27th day of June, 1871, is void, because of the failure of the Pearl River Improvement and Navigation Company to comply with the terms of the act under which said patent was issued.

They deny and say that it is untrue that the Company did not file with the Secretary of State a bond with security as provided by said act and that no such bond was approved by the Governor, and countersigned by the Secretary of State.

The defendants are without knowledge as to whether the promoters of the Pearl River Improvement and Navigation Company were guilty of any fraud in the organization of the said Company, and they are without knowledge of what manipulations, if any were used by the said Company in securing the patent, and they say that it is immaterial to them whether said patent was secured by fraud or not, because even though secured by fraudulent means the defendants say that they are the purchasers of said property for a valuable consideration, and without notice of any fraud on the part of said Company in obtaining said land from the state.

They deny and say that it is untrue that this patent was held to be fraudulent and void by the courts in this state more than twenty years ago and that it has ever since been so regarded, and they deny and say that it is untrue that they purchased the lands in reliance upon

the uniform holding of our courts, including our Supreme Court that the pretended patent of the Pearl River Improvement and Navigation Company was void.

The defendants deny and say that it is untrue that each of the several conveyances from the Pearl River Improvement and Navigation Company down to these defendants were likewise fraudulent and void and that they passed no title to the defendants and did not affect the real title to said lands.

The defendants deny and say that it is untrue that their claim of ownership to the property and the claim of those under whom they hold title passed on the patent from the said State of Mississippi to the Pearl River Improvement and Navigation Company, and the several deed made in pursuance thereof cast a cloud, doubt and suspicion on the complainant's title.

Further answering the defendants say that the Pearl River Improvement and Navigation Company on November 20th, 1872, sold and conveyed the land involved in this suit to one, Matthew S. Baldwin, by deed of conveyance, which was duly filed for record and is recorded in Book M pages 122 to 125 of the Deed Records of Lawrence County, Miss., and on March 17th, 1873, the said M. S. Baldwin sold and conveyed the said land to one, Thos. A. Flowers, by deed which was duly filed for record and is recorded in Book M, pages 158 to 160 of the Deed Records of said County, and that on March 3rd, 1884 the tax Collector of Lawrence County, Miss., sold and conveyed the said land to the State of Mississippi for the taxes assessed thereon to Flowers and Norton, and delinquent for the taxes due thereon for the year 1883.

That one John D. Norton had acquired some interest in said land from the said Thos. A. Flowers, or because connected with it in some way, so that it became and was

assessed to Flowers and Norton. A certified copy of the list of land forfeited to the State of Mississippi, embracing the above described land on March 3rd, 1884, will be filed with this answer and made a part of the same as Ex-B, and if not filed as such exhibit, the same will be introduced in evidence on the trial of this cause.

That on February 25th, 1887, the State of Mississippi by patent, sold and conveyed the said land to one J. M. Phillips and the same appears of record Book Z, page 349 of the Deed Records of Lawrence County, Mississippi. The same having been filed for record on April 18th, 1887.

That on March 4th, 1887, J. M. Phillips sold and conveyed the said land to one, A. E. Randle, and by this deed of conveyance it was duly filed for record on April 17th, 1887, and is recorded in Book Z pages 252 and 253 of the Deed Records of Lawrence County. That on theday of 1907, the said A. E. Randle, for and in consideration of the sum of \$4500.00, paid to him in cash by the defendants, sold and conveyed the above described lands together with other lands to these defendants by deed of conveyance, which was duly filed for record, and is recrded in Book..... pageof the Deed Records of Lawrence County.

The defendants are advised and so charged and aver that they are bona fide purchasers of said land for value and without notice, and that under the Constitution and Laws of the United States, and the Decisions of the Courts of the United States, they are the owners of legal and equitable title to the land involved in this litigation, and they claim that their title to said property is guaranteed to them by the Constitution and Laws of the United States, and they claim all the benefits, rights and protection guaranteed and granted to them by said Constitution and Laws of the United States.

That the defendants are advised and they so charge and aver on information and belief that the State of Mississippi, by the Act of the Legislature herein before referred to, granted the title to this property to the Pearl River Improvement and Navigation Company, and also by its patent issued thereunder, and the said property then became the private property of private parties and is not subject afterwards to be interfered with by either the Legislature, Executive or Judicial Department of the State. That there is no principle known to our system of government under which private property can be taken from one person and presented to another for the private use and benefit of such other person. Neither can the same be taken by the state for public use, except on such compensation being duly made. The defendants claim the title and ownership to the land under the Constitution of the United States. They invoke the benefit of that provision which says "that no person shall be deprived of life, liberty or property without due process of law," and which guarantees to them the protection of property by the law of the land. They now claim the rights and benefits guaranteed to them by these provisions of the Federal Constitution and the decisions of the United States Circuit Court of Appeals in the construction and interpretation of these legislative enactments, by which the validity of the patent issued thereunder is upheld.

They are advised that the Supreme Court of Mississippi has never squarely and unequivocally passed on the validity of this patent issued June 27th, 1871 to the Pearl River Improvement and Navigation Company unconnected with other issues and questions, and defendants have reason to believe that the final rulings of the court on the validity of this patent when directly presented, without being coupled with other matters will be in accord with the holding of the Federal Court. That these two Courts have concurrent jurisdiction of the subject matter involved in this litigation, and their decisions constitute a "rule of property" and a conflict in decisions

is and would be deplorable in that a non-resident of the State under the rule of property established by the Federal Court is preferred over a resident of the State, and under the "rule of property" established by the State Court the status of the title is left in doubt and uncertainty.

The defendants further say that in as much as the question have presented involves the legality of the Acts of the State and the right of the state to repudiate the Act of both Legislative and Executive Departments, and thus impair the obligations of its own contract, the state is not qualified to sit in judgment on these questions and its Courts and Judges are equally disqualified, because they are but the officers of the State, and to permit such officers and representatives of the State, to pass on these questions is equivalent to allowing a party to sit in judgment in his own case. At any rate the construction sought by the complainant would impair the obligations of the contract made by the state, and violate both the Constitution of the State and of the United States. That the Acts here involved are the acts of the State itself and they should be determined by an impartial tribunal and the only Courts qualified in this jurisdiction to pass on these issues are the Courts of the United States, and the conclusions reached by these Courts are to the effect that the state cannot repudiate its solemn obligations and the validity of the patent is fully sustained.

The defendants ask therefore, that this cause be transferred to the United States District Court for the Southern District of Mississippi, and they offer to make bond for the costs of removal in any reasonable sum which the Court may require.

And now having duly answered the defendants pray that this, their answer may be taken and considered as a cross bill against the complainant and that process may issue for the complainant requiring it to appear before

the Honorable Court at rules on the 2nd Monday in March, 1912 to answer the allegations of this cross bill. And to show cause, if any, why the suit shall not be removed to the United States District Court for the Southern District of Mississippi.

On the final hearing may it please the court to adjudge and decree that the defendants are the real, true, legal and equitable owners of the title to the land sued for and may the right, claim and title asserted by the complainant to the said property be held, adjudged and declared to be null and void and be cancelled as casting a doubt, cloud or suspicion on the title of the defendants and may the said complainant be perpetually enjoined from asserting any right, title or claim to said land.

If the defendants have prayed for wrong, improper or insufficient relief, pray grant it such other relief, general or special as the nature of the case may entitle it to receive, and as in duty bound it will ever pray.

MRS. ELLA MAY
F. F. BECKER
MRS. M. L. JONES
Defendants.

JONES & TYLER,
Their Solicitors.

STATE OF MISSISSIPPI,
Lincoln County,
City of Brookhaven.

Personally appeared before the undersigned Notary Public of the said City, the above named Mrs. Ella May, F. F. Becker and Mrs. M. L. Jones, who being by me first duly sworn, depose and say that the facts stated in the foregoing answer and cross bill as of their personal

knowledge or true and correct, and the matters and things stated on advice, information and belief are believed to be true.

ELLA MAY
F. F. BECKER
MAGGIE L. JONES

Sworn to and subscribed before me this the 15th day of February, 1912.

N. T. TULL,
Notary Public (Seal)

Whereas by an Act of the Legislature of the State of Mississippi, approved on the 8th day of April, 1871, the Legislature of the State of Mississippi incorporated the Pearl River Improvement and Navigation Co. and whereas subsequent to the passage of said Act incorporating the Pearl River Improvement and Navigation Company, said Company organized as by the terms of said Act made and provided, and whereas afterwards the lands hereinafter described was patented to said Company by the State of Mississippi in compliance with the provisions of the Act and whereas on the 4th day of July, 1872, the Pearl River Improvement and Navigation Company did at a meeting duly called and held at the City of Jackson, within the State of Mississippi, the domicile of said Company, pass a resolution authorizing and empowering Samuel A Vose, the President of said Comany, to contract, grant, bargain, sell, mortgage, alien, and convey the whole or any part of the land belonging to said Company on such terms and conditions as said Vose thought for the best interest of the Company, and that O. C. French, Secretary affixed the corporate seal of the Company to such deed or deeds.

Therefore, know all men by these presents, that the Pearl River Improvemnt and Navigation Company by S. A. Vose, President, grant, bargain and sell, alien and convey unto Matthew S. Baldwin for and in consideration of

the sum of Twenty-Eight Hundred and Fifty Dollars in hand paid by the said Baldwin to the Pearl River Improvement and Navigation Company, the receipt of which is hereby acknowledged, to have been received by said Company in full of all consideration for the following described tracts or parcels of land bounded and described as follows, to-wit: North East quarter of the South West quarter, North West quarter of the South West quarter, North West quarter of the South West quarter, and South East quarter of the South West quarter, and South West quarter of the South East quarter, all in Section 17, all in Township 5 N. Range Twelve E.

(With other lands)

To have and to hold aforesaid described tracts or parcels of land together with all the rents, profits, and appurtenances thereunto belonging unto the said Matthew S. Baldwin, his heirs, administrators and assigns forever.

The Pearl River Improvement and Navigation Company and their successors, warranting and defending the title to all and singular the aforesaid tracts or parcels of land as well in law and in equity against the lawful claims of any person whomsoever, all of which the Pearl River Improvement and Navigation Company covenants to well do and perform.

Done at the City of Chicago, within the State of
Illinois, this 20th day of November, 1873.
2

President Pearl River Improvement and Navigation Company, by Samuel A. Vose, President of said Company.

Attest:

C. C. French, Secretary of the Pearl River Improvement and Navigation Company.

State of Illinois,
County of Cook, SS
City of Chicago.

BE IT REMEMBERED that on this twentieth day of November, in the One Thousand Eight Hundred and Seventy Two, before me the undersigned Philip A. Hyne, a commissioner in the City of Chicago, County of Cook and State of Illinois, duly commissioned and qualified by the executive authority and under the laws of the State of Mississippi to take acknowledgment of deeds, etc., to be used or recorded, therein personally appeared Samuel A. Vose, President, and O. C. French, Secretary of the Pearl River Improvement and Navigation Company, to me personally known to be individually named and who executed the foregoing instrument and who each acknowledged that they signed, sealed, and delivered the same on the day and therein named as their voluntary act and deed as the officers of the said Company, and also as the act and deed of the said Pearl River Improvement and Navigation Company, and caused the corporate seal of said Company to be affixed for the purposes and uses therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year aforesaid.

PHULIP A. HYNE,
Commissioner for Mississippi in Chicago,
Illinois.

Filed and recorded March 23, 1873.
Book M. Pages 122-125.

**STATE OF MISSISSIPPI,
Hinds County.**

I, W. J. Buck, Clerk of the Supreme Court of the State of Mississippi do hereby certify that the attached pages contain a true and correct copy of answer of the defendants to the bill of Complaint, and deed from the Pearl River Improvement and Navigation Company, by S. A. Vose, President to Matthew S. Baldwin, as found and contained in the record in the Supreme Court of Mississippi in cause 17,851-F. F. Becker, et al v. Columbia Bank, appealed from the Chancery Court of Lawrence County and affirmed by the Supreme Court of Mississippi, January 8, 1917. I further certify that said above named cause is reported in the Mississippi Reports of Supreme Court decisions in 112 Mississippi Reports, page 819-826.

Witness my hand and the Seal of the Supreme Court of Mississippi hereunto affixed at offices in the Capitol in the City of Jackson, this the 17th day of April, 1925.

(Seal)

W. J. BUCK,
Clerk of the Supreme Court of Mississippi.

(c) CERTIFICATE OF CLERK OF CHANCERY
COURT OF LAWRENCE COUNTY RELATIVE TO
LANDS INVOLVED IN BECKER v. COLUMBIA BANK.

STATE OF MISSISSIPPI,

Lawrence County.

I, H. J. Patterson, Clerk of the Chancery Court in and for Lawrence County, State of Mississippi, do hereby certify that the Patent from the State of Mississippi, to The Pearl River Improvement and Navigation Company, dated June 27, 1871, and duly recorded March 24, 1873, in Deed Record "M" on pages 118-121 of the Records of Lawrence County, Mississippi, contains the following land, to-wit:

SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 17, Township 5 North of Range 12 East, containing 199.75 acres.

Further that the deed from the Pearl River Improvement and Navigation Company to Matthew S. Baldwin, dated November 20, 1872, and duly recorded March 25, 1873, in Deed Record "M" on pages 122-125 of the Records of Lawrence County, Mississippi, contains the following lands, to-wit: ,

NE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 17, Township 5 North of Range 12, East:

Further that the Case of The Columbia Bank, Vs. F. F. Becker and others, No. 6677 of the Chancery Court Docket, Lawrence County, Mississippi, to quiet title, affected the SW $\frac{1}{4}$ of Section 17, Township 5 North of Range 12 East, Lawrence County, Mississippi.

Witness my signature and seal of office, this May 19th, 1924.

(Seal)

H. J. PATTERSON,
Chancery Clerk.



APR 10 1926

WM. R. STANSBURY
CLERK

IN BOND

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1925.

No. 363.

EDWARD HINES, FELLOW PINE TRUSTEES,

PETITIONERS,

ANNA F. C. MARTIN, F. C. MARTIN, H. P. LEWIS
AND GEORGE LAWRENCE, RESPONDENTS.

ON A WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE
FIFTH CIRCUIT.

ADDENDA TO BRIEF FOR RESPONDENTS.

WILLIAM H. WATKINS.

Jackson, Miss.

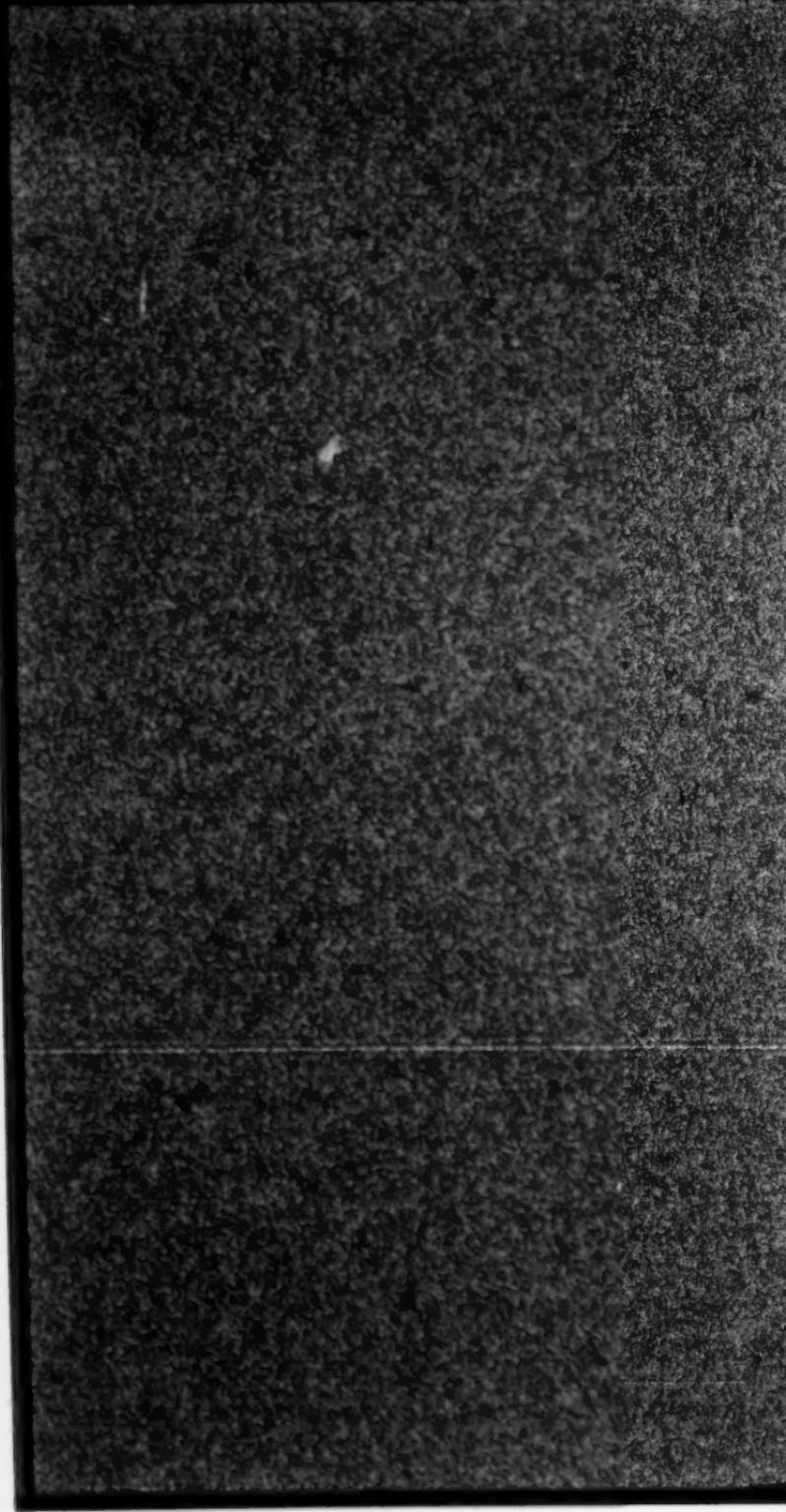
FLEET C. HATHORN.

Hattiesburg, Miss.

HATHORN & WILLIAMS,

Pokagonville, Miss.

Attorneys for Respondents.



IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1924.

No. 363.

EDWARD HINES YELLOW PINE TRUSTEES,
PETITIONERS,

v.s.

ANNA F. C. MARTIN, F. C. MARTIN, H. P. LEWIS
AND GEORGE LAWRENCE, RESPONDENTS.

**ON A WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE
FIFTH CIRCUIT.**

ADDENDA TO BRIEF FOR RESPONDENTS.

EXPLANATION.

By inadvertence, a discussion of the proper interpretation to be given the Act of 1873 (Appendix "C" to petition for certiorari herein), was omitted from our brief, and it is our purpose to discuss this question by way of addenda to our brief.

IT WAS NOT THE PURPOSE OF THE ACT OF 1873 TO RATIFY TITLE TO ANY LAND PATENTED TO PEARL RIVER IMPROVEMENT & NAVIGATION COMPANY, UNDER ANY CIRCUMSTANCE, UNLESS AND UNTIL TWENTY-FIVE CENTS PER ACRE THEREFOR HAD BEEN PAID INTO THE STATE TREASURY.

By reference to this legislative act, it is perfectly manifest that its purpose was two-fold: (a) to relieve the Pearl River Improvement & Navigation Company from its obligation, under the Act of April 8, 1871 (set out at pages 30 to 34 of petition for certiorari herein), to improve Pearl River; and (b) to secure instead the payment into the State Treasury of the value of the land (twenty-five cents per acre), or in default thereof title to the land itself was to rest absolute in the State, to the end that the State might carry out the purpose of the grant.

By reference to our brief, and to the exhibit thereto filed herein, it has been made to appear that at the date of the enactment of said Act of 1873 the Pearl River Improvement & Navigation Company owned none of the lands patented to it under the Act of April 8, 1871; but had prior thereto, in November, 1872, conveyed to M. S. Baldwin all of the more than 100,000 acres patented to it. So that if section 6 of the Act of 1873 is to be given the interpretation claimed by counsel for petitioners, there are no lands left upon which the remaining five sections of said Act of 1873 can operate or be given effect. This contention puts the legislature in the anomalous position of trying with one hand to recover these lands, or their supposed value of 25 cents per acre, and with the other hand making a gracious gift of the lands to Baldwin; and loses sight of the fact

that the main purpose of the Act of 1873 was to relieve the Improvement Company from making the improvements on Pearl River and to secure payment into the State Treasury of 25 cents per acre for the lands, or in default thereof the lands themselves, to the end that the State might carry out the purpose of the grant. Not only this, but the contention entirely defeats the manifest intention of the legislature and the whole purpose of the Act.

The court will give effect to the legislative intent. As said in *Platt vs. Union P. R. Co.*, 99 U. S., 48, 25 L. Ed., 424, at middle page 59 of 99 U. S.:

"We are seeking for the intention of Congress, and to discover that we may look at the paramount object which Congress had in view, as well as the means by which it proposed to accomplish that object."

Wherever the words of a statute are ambiguous, or the meaning doubtful, the established rule of construction is that the intention must be deduced from the whole statute, and every part of it. 1 Kent's Com., 462; *Rice vs. Minnesota & N. W. R. Co.*; 1 Black., 358; 17 L. Ed., 147. (See page 378 of 1 Black., near bottom page.)

General language used in a statute should receive such a limited construction as will accord with the legislative intention as gathered from the provisions of the whole act. *McKee vs. United States*, 164 U. S., 287; 17 Sup. Ct. Rep., 92; 41 L. Ed., 437. (See middle page 293, 164 U. S.).

In cases admitting of doubt the intention of the lawmakers is to be sought in the entire context of the section, statute, or series of statutes *in pari materia*. *Atkins vs. Fiber Disintegrating Co.*, 18 Wall., 272; 21 L. Ed., 841. (See last paragraph page 301, through first paragraph page 302 of

18 Wall.) See also to same effect *Peck vs. Jenness*, 7 How., 612; 12 L. Ed., 841.

If a literal interpretation of any part would operate unjustly, or absurdly, or contrary to the meaning of the act, it should be rejected. The construction must be such that the whole can stand if possible. *Heydenfeldt vs. Doney Gold & S. Min. Co.*, 93 U. S., 634; 23 L. Ed., 995. (See first paragraph near top page 638 of 93 U. S.)

The intention of the legislature, when properly ascertained, must govern in the construction of every statute, and single sentences and single provisions are not to be selected and construed by themselves, but the whole statute must be examined and all its provisions construed together. *Pollard vs. Bailey*, 20 Wall., 520; 22 L. Ed., 376 (see last paragraph, page 525, of 20 Wall.); *United States vs. Baisdore*, 8 How., 113; 12 L. Ed., 1009. (See first part of last paragraph, page 122, of 8 How.); *Goyler vs. Wilder*, 10 How., 477; 13 L. Ed., 504. (See fourth and fifth paragraphs, page 496, of 10 How.); *Brown vs. Duchesne*, 19 How., 183; 15 L. Ed., 595. (See last paragraph, page 194, and first paragraph, page 195, of 19 How.)

Statutes should be interpreted according to the intent and meaning of the legislature; and when words or phrases, if taken literally, would be inconsistent and repugnant, they should receive a liberal interpretation, considering the causes and necessity of the statute, and be made to harmonize, repugnancy avoided and inconsistencies reconciled, unless it appears that the difficulty cannot be overcome without doing violence to the language of the lawmakers. *New Lamp Chimney Co. vs. Ansonia Brass & Copper Co.*, 91 U. S., 656; 23 L. Ed., 336. (See last paragraph, page 662, of 91 U. S.)

As stated above, if section 6 of the Act of 1873 is to be

interpreted as ratifying the deed to Baldwin and confirming title in him to the land, then there is no land left upon which the first five sections of the act are to operate, and the manifest purpose of the legislation is defeated. To give to section 6 of the act the meaning contended for by petitioners is to render it repugnant to the remainder of the act, and is to nullify the remainder of the act, and defeat its manifest purpose. However, it is not necessary that the word "deeds" used in section 6 of the act, the use of which is the basis of the contention of petitioners, should be construed as being synonymous with "conveyances." Many instruments are known to the law as "deeds" which are not "conveyances." But even if it was used in the sense of "conveyances," effect can be given to it without at the same time defeating and destroying the whole scheme and purpose of the law. It will be remembered that by section 1 of the Act of April 8, 1871, incorporating Pearl River Improvement & Navigation Company, that company was empowered to hold real estate, which might be acquired by gift, grant or purchase, and to lease, sell, mortgage, grant, alien and convey the same, with the same privileges as a private individual; and that by section 3 of said act, it was empowered to build sawmills, gristmills, warehouses, tenement houses, storehouses, cotton gins, and such other buildings, factories, and improvements as it might deem advisable. These powers were conferred upon, and to be exercised by, the Improvement Company in its capacity as a private corporation, and are wholly separate and distinct from its powers and duties regarding the improvement of Pearl River and the public lands which it was authorized to acquire under the donation for that purpose. There is nothing in the record to show what lands were acquired and

mortgaged or sold by the corporation in its private capacity, and in and about the erection and operation of mills, factories, etc. But it had the power to acquire and mortgage or sell lands, *altogether aside from the public lands in controversy*, and the word "deeds" used in section 6 of the Act of 1873 might well have reference to lands acquired and sold or mortgaged by the company in its private capacity, thus giving something upon which section 6 is made to operate and at the same time leaving the public lands provided to be donated to the company for the purpose of improving Pearl River upon which the remaining five sections of the act is made to operate; and thus, the statute is construed harmoniously in all its parts, and the manifest intention of the legislature as expressed in the first five sections of the statute is given effect.

In construing the statute, consideration must be given to the purpose for which these lands were donated to the State by the Act of Congress, commonly called the "Swamp Land Act"; also to the purpose manifested by the Act of April 8, 1871, creating Pearl River Improvement & Navigation Company, which was for the improvement of the navigation of Pearl River; also to the fact that it clearly appears from reading the Act of 1873 that the legislature realized the company had failed to make the improvements contemplated by the Act of 1871; and, finally, that the obvious purpose of the legislature, in view of the failure of the company to make the improvements or devote the proceeds of the lands to the improvements contemplated both by the grant of Congress to the State and the grant of the State to the company, was either to secure from the company payment into the State treasury of 25 cents per acre for the land or to repossess the land itself, to the end that the State might devote the lands or the proceeds thereof to the object of the

donation. Good faith by the State with the Government, and good faith by the company with the State required nothing short of this.

As we have shown, the company conveyed to Baldwin in November, 1872, all of the more than 100,000 acres donated to the company by the Act of April 8, 1871. And it is shown by the agreed statement of facts in the case at bar (R., 69, paragraph 9) that great quantities of these lands have been repatented by the State to divers persons. So that, the effect of holding that section 6 of the Act of 1873 ratified title to these lands in Baldwin will not only endanger and sacrifice great public interests by defeating the purpose of Congress in making the donation, and by defeating the purpose of the State in originally donating the lands to the Improvement Company, but will jeopardize both the public interest and the public good by divesting the citizens of the State and the holders of these lands under second patents of their title thereto, thus subjecting the citizens to disastrous and harrassing litigation over titles thought to be held secure under these second patents for half a century, and subjecting the State itself to liability for repayment to its second patentees of the purchase price of the lands.

As said by this Court in *Bird vs. United States*, 187 U. S., 118; 23 Sup. Ct. Rep., 42; 47 L. Ed., 100 (see last three lines of first paragraph page 124 of 187 U. S.):

"There is a presumption against a construction which would render a statute ineffective or inefficient, or which would cause grave public injury or inconvenience."

And, also, as said by the Supreme Court of Delaware in the case of *Pickering vs. Day*, 3 Houston (Del.), 474, 95 Am. Dec., 291:

"Where the language of a statute is not clear, and it is obvious that by a particular construction grave public interests would be endangered or sacrificed, the court ought not to presume that such construction was intended by the makers of the law."

When section 6 of the Act of 1873 is read in connection with the facts as they existed at that time and in the light of the clear language and manifest purpose of the other five sections of the Act, that is to say, either to secure payment into the treasury of 25 cents per acre for the lands or in default thereof the lands themselves, to the end that the State itself might carry out the purpose of the grant, it certainly cannot be said that section 6 of the Act *clearly means* what counsel for petitioners contend that it means, that is, that title was divested thereby out of the State and vested in Baldwin without the payment of the 25 cents per acre.

We respectfully submit, therefore, that the Court is not called upon, even if this question were otherwise open to consideration by the Court under the State of the record in the case at bar, to sacrifice the true intent and purpose of the legislature as gathered from the first five sections of the Act of 1873, by giving effect to section 6 thereof as contended for by petitioners, and thereby to endanger and jeopardize great public interests.

Respectfully submitted,

WILLIAM H. WATKINS,
FLEET C. HATHORN,
HATHORN & WILLIAMS,
Attorneys for Respondents.